

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3081 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAYAJI IRON AND ENGINEERING COMPANY LIMITED

Versus

SG UPADHYAYA

Appearance:

M/S TRIVEDI & GUPTA for Petitioner
MR NR SHAHANI for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 17/06/96

ORAL JUDGEMENT

1. Rule. Mr. N.R. Shahani waives service of rule for respondent. With the consent of the learned advocates appearing for the parties, the matter is finally heard today and is disposed of by this judgment.

2. The petitioner company is aggrieved by the Award dated 20th December, 1995 passed by Labour Court, Baroda, in Reference No. 179 of 1986. It appears that for the

alleged misconduct of not discharging his duties vigilantly as a Security Guard and of not protecting two superior Officers, namely, Shri O.P. Mehta and Mr. K.K. Thapa when they were allegedly mercilessly beaten by some of the employees, after issuing charge sheet, enquiry was held against the respondent Shriram G. Upadhyay who was the Security Guard. On a Reference being made, the Labour Court permitted the employer to prove the charge sheet in the Court by leading necessary evidence and after the evidence was led by both the parties, on appreciation thereof, the Labour Court found that the charges levelled against the petitioner were not established. The Labour Court also found that the employee has not committed any misconduct.

3. The aforesaid Award is under challenge before this Court and Mr. Kamal Trivedi for the petitioner has taken the Court through the entire Award as well as appreciation of evidence by the Labour Court. In his submission, the misconduct of the employee is established by the evidence of two victims, namely, O.P. Mehta and K.K. Thapa and that there was sufficient evidence to bring home the guilt and to dismiss the employee from service. The Labour Court has examined the evidence in greater detail. The Labour Court has also found that on some of the points stated by the aforesaid two officers in their deposition, there was no direct evidence available. The Labour Court has also found that the employee was the Gate Guard or Security Guard at the gate and that he could not run to rescue the aforesaid officers. The Labour Court has also found that on the overall appreciation of the evidence, the charge was not established and has therefore ordered reinstatement of the employee with payment of 90 per cent backwages and further payment of cost of Rs.500/- to the workman.

4. Looking to the gravity of the misconduct and the evidence of two officers, it is submitted before the Court that the only reasonable finding which could be reached is that a serious misconduct was committed. The appreciation of evidence is the primary duty of the Labour Court and ordinarily, this court in its jurisdiction under Article 227 of the Constitution of India would not substitute its own findings to those of the Labour Court unless they are found to be palpably wrong or so unreasonable or perverse that no reasonable man on this earth could reach. It is difficult for this Court to reach such a conclusion or to agree with Mr. Trivedi that the Award of the Labour Court is vitiated.

4. However, Mr. Trivedi very vehemently submitted

before the Court that award of backwages of 90 per cent to such an employee who has been involved in a serious misconduct of this nature would establish a bad precedent for the company. There would be total anarchy in the premises of the company if such misconduct is encouraged. In his submission, Award of 90 per cent backwages to an employee who is admittedly not in service from the date of dismissal is too generous and is turning a Nelson's eye to the harder realities prevailing in industrial premises. He further submitted that even the Apex Court has now accepted the rule of "no work no pay" and therefore award of 90 per cent backwages should be set aside. Mr. N.R. Shahani on the other hand submitted that respondent workman would agree to the reduction of backwages to 50 per cent on his own without in any way conceding to the submission made by the learned counsel appearing for the petitioner. The desire of the respondent workman is to put an end to the litigation and to resume duty which would provide him sustenance after over a period of 11 years. In view of the aforesaid, in my opinion, if the following order is passed, ends of justice would be met.

"The judgment and award of the Labour Court dated 20th December, 1995 is hereby quashed and set aside and substituted only to the extent of substituting the award to 50 per cent backwages from 90 per cent backwages and the petitioner agrees to reinstate the respondent workman in service within a fortnight from today. Rule is accordingly made absolute to the aforesaid extent."
